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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,371	06/22/2000	John D. Nelson	101992-200	8796

27267 7590 11/29/2006

WIGGIN AND DANA LLP  
ATTENTION: PATENT DOCKETING  
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NEW HAVEN, CT 06508-1832

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/599,371	Applicant(s) NELSON ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 10, 33, 34, 43, 45, 48, 50, 52, 56 and 57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 33, 34, 43, 45, 48, 50, 52, 56 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1, 10-11, 33, 34, 43, 45, 48, 50, 52, 56 & 57 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### Claim Rejections. 35 USC § 112

Claims 1,10,11,33,34,43,45,48,50,52,56,& 57 ARE rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what is intended by SALT, since claim 33 recites water soluble zinc metal salt & includes @ claim 34 zinc oxides, while claim 43 separates zinc salts from zinc oxides & hydroxides.

#### Claim Rejections. 35 USC § 102

Claim 1, 10, 11, 43, 50, 52, & 57 stand- rejected under 35 U.S.C.

102(e) as being anticipated Kaufman et al 6-17562

We give no patentable weight to the future intended use of the claimed composition as a dilution with enhanced effects, nor to method of formation of the salts.

Shown are pyrithione, preferably sodium pyrithione (col. 4, line 17-30) & zinc chloride or sulfate (line 44-47) within the instant claimed range (lines 49-52). The carrier can include alkanolamine (line 60).

Claim 1,10,11,48 stand rejected under 35 U.S.C. 102(b) as being Dixon et al EP 077630

Here, too, is the instant composition, see page 4, .05 –1% Cu sulfate to 2% ZPT.

.Claims 1,10,11,33,34,43,45,50,52,56 stand rejected under 35 U.S.C. 102(b) as being anticipated by Nagata- JP 134227

See p. 7, 0.01-10% zinc oxide/0.005-5%ZPT, within the instant Concentrations & dilution ranges.

Claims 1,10,11,33, 34, 43, 48, 50, 52, 57 strand rejected under 35 U.S.C.

102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wiese et al 5227156.

The rejection of record is maintained. All the components within the instant ranges are present; see col. 1, lines 64-68 & Col. 3 shows 0.1-2% ZPT & 0.001-1% zinc salts- thus within the 1/300-50/1 & the 1:10- 1:100 IF Diluted, as for instance in the use of water while applying the shampoo, or if one were to desire a dilution, of the 2/1 to .2/ 1 as at claim 1. The organic, an alkanolamine, is not required.

Claims 1, 10-11, 33, 34, 43, 45, 48, 50, 52, 56 & 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kappock et al 5518774.

The rejection of record is maintained. 1:10 to 10: 1 salts are shown @ col. 3, lines 13-20, 1/10 dilution is at example 2.

### ***Response to Arguments***

Applicant's arguments filed 9/08/06 have been fully considered but they are not persuasive. Arguments in essence are seen as to the effect the cited art does not show concentrates, diluted or dilutable, with effects on microbes as enhanced effects. We examined & rejected the compositions as claimed, with recognition of the artisan able to dilute as desired, including in rejections compositions as are normally diluted, particularly with water. No significance was shown to the manner in which the metal salts were produced, nor to the particular microbes or fungi intended to be inhibited or killed, nor to the fact that intended dilutions would result in compositions with enhanced antimicrobial effects. All the cited art incorporates the pyrithione or pyrithione complexes as antimicrobials. All can be diluted. The instant concentrations are never claimed as containing any particular % of pyrithione, thus those concentrations cited are seen as meeting the instant "concentrate", for instance at 2% pyrithione.

The action was not made final, because of recognition of the problem of "salt" as used in the claims & addressed as a 2<sup>nd</sup> paragraph 112 concern. Also, we find credence given to the claimed ratios negates the rejection of certain claims by some of the references. The claim 10 limitation is not seen as applicable to the composition per se, while the organic solvent is optional, thus the alkanolamine is not required in those claims. The re-introduced limitations are, however met as rejections indicate.


Finally, Claim 56 was amended in the response of 9/08/06, but not so indicated.

Art Unit: 1615

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NEIL LEVY  
Primary Examiner  
Art Unit 1615

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